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#44

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ROME, ITALY Date: MAR 18 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the District Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who last entered the United States in 1986, as a non-immigrant visitor. On June 17, 1992 the applicant was placed in removal proceedings and on August 14, 1992, an immigration judge entered a final order of deportation. On March 24, 1997 a letter was issued for the applicant to surrender to the Immigration and Naturalization Service (now know as Citizenship and Immigration Services (CIS)) on June 2, 1997. The applicant failed to surrender for removal or depart the United States. On November 16, 2000 the applicant was arrested at his place of business on November 22, 2000 and was removed to France. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to travel to the United States to reside with his U.S. citizen spouse.

The district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director Decision* dated June 17, 2003.

During the applicant's proceedings before an immigration judge, the judge found him statutorily ineligible for suspension of deportation due to a meaningful interruption of the required physical presence and because he had not established that any hardship would result from his deportation. Additionally, the judge denied voluntary departure to the applicant because of his history of misrepresentation, use of documents which were apparently fraudulently obtained, failure to pay income taxes and his less that credible testimony at the hearing. During the proceedings the applicant presented a fraudulently obtained French passport, which listed his place of birth as Italy. Furthermore on several immigration documents the applicant listed his place of birth as Italy. The statements made by the applicant regarding his citizenship and place of birth were proven to be false. The applicant appealed the immigration judge's decision and on July 30, 1999, the Board of Immigration Appeals dismissed the appeal. On November 22, 2000 the applicant was removed to France.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of

> such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.
>
> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief, letters of recommendation from friends regarding his character, articles from magazines and newspapers regarding the applicant's employment and a clinical report regarding the applicant's spouse. In his brief counsel asserts that the district director's decision is capricious, arbitrary and constitutes abuse of discretion.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

> The basis of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to if the applicant were not allowed to return to the U.S.

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

In *Tin,* the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would be a

condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully. *Id.*

The applicant married a naturalized U.S. citizen on July 17, 2001 in France. The applicant's spouse submitted an affidavit in which she claims that she suffering financial and physical hardship due to the inability of the applicant to return to the United States. The applicant's spouse states in the affidavit that she is working long hours in order to keep their business open and that her doctor mentioned that she might be working herself into exhaustion. The clinical report for the applicant's spouse does not include a narrative explaining the significance of the data submitted, nor does she or the clinical report mention whether she is receiving any medication or treatment for her condition.

The court held in *Garcia–Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v.INS,* 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States in 1986, fell out of lawful status, was ordered excluded and deported, was removed from the United States in 2000 and married his U.S. citizen spouse on July 17, 2001 in France seven months after his deportation from the United States. He now seeks relief based on that after-acquired equity.

The favorable factors in this matter are the absence of a criminal record, the applicant's family tie to a U.S. citizen and the favorable recommendations.

The unfavorable factors in this matter include the applicant's failure to depart the United States after a final removal order was issued by an immigration judge, his lengthy unlawful presence and employment in the United States, not paying taxes on income earned in the United States and his misrepresentation and use of false or fraudulently obtained documents of the United States and France. The Commissioner stated in *Matter of Lee, supra,* that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. His equity, marriage to a U.S. citizen gained after his deportation from the United States can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.